85-745

No.

Supreme Court, U.S.
FILED
OCT 31 1985
JOSEPH F. SPANIOL, JR.
CLERK

IN THE

SUPREME COURT OF THE UNITED STATES

October Term, 1985

HILTON HAZELWOOD and KATHRYN W. HAZELWOOD - - - Petitioners,

versus

UNITED STATES OF AMERICA - - Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

HILTON HAZELWOOD and KATHRYN W. HAZELWOOD
828 Watson Lane
Henderson, Ky. 42420
(502) 827-5128

Dated: October 30, 1985

WESTERFIELD-BONTE CO., 619 W. KENTUCKY—P.O. BOX 3251, LOUISVILLE, KY.

QUESTIONS PRESENTED

1. Whether for purposes of laying all duties, imposts, and excises, the uniformity clause should be read "but all duties, imposts, and excises, laid by the legislature, shall be uniform throughout the United States."

2. Whether the equal exemption of the first articles in a class was always in the discretion of Congress in laying all duties, imposts, and excises.

3. Whether the word "uniform" as used in the words "All duties, imposts, and excises, laid by the legislature, shall be uniform" dictates a certain mathematical exercise or formula, in the same sense that the multiplication tables dictate a certain mathematical exercise or formula.

4. Whether the geographical uniformity concept can have an existence if the exempted articles plus the taxed articles in the law equals 100% of the same property in all places in the United States.

5. Whether the geographical uniformity concept amounts to a restriction on Congress since Congress can lay different effective rates to the same property by reducing unequally the taxable size of the property.

6. Whether "a tax is uniform when it operates with the same force and effect in every place where the subject is found" when the subject represents different percentages of the total property at the different places where the subject is found.

7. Whether the uniformity clause is satisfied "when Congress defines the subject of a tax in nongeographic terms" if the subject of the tax represents widely different percentages of the whole property in different places in the United States.

8. Whether the income tax deductions and exemptions "apply with equal force in every place where the subject of

the deduction or exemption is found "when the taxes are laid with progressive rates.

9. Whether the uniformity clause required Congress to be blind to state lines to obey the command that "all duties, imposts and excises, laid by the legislature, shall be uniform throughout the United States.

10. Whether the unequal income tax deductions, exclusions, and exemptions should be converted into taxable tax credits in order to obey the command that the taxes be uniform.

11. Whether uniform taxes should be spent in-kind and in-place with unequal non-taxable tax credits when the purpose serves a national interest and not a private interest.

12. Whether, with the benefit of hindsight, the Supreme Court exhaustively studied the framers intent in enacting the uniformity clause in its opinion of *Knowlton* v. *Moore*, 178 U. S. at 83-109.

13. Whether the uniformity clause was proposed as one of several measures designed to limit the national government's authority to wield its power over commerce to the disadvantage of particular states.

14. Whether the concerns of regionalism had been satisfied before the preference clause and the uniformity clause were adopted.

15. Whether the formula—"the same amount to be laid to the same articles in each state" is the only formula that will produce the uniform tax required by the uniformity clause.

PARTIES

The names that appear in the caption are all the parties.

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HILTON HAZELWOOD and
KATHRYN W. HAZELWOOD - - - *Petitioners,*

v.

UNITED STATES OF AMERICA - - *Respondent.*

PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

OPINIONS BELOW

The September 26, 1985, order of the Court of Appeals is not reported and is appended hereto as Appendix "A."

The February 8, 1985, order of the District Court is not reported and is appended hereto as Appendix "B."

JURISDICTION

This action is instituted pursuant to, and jurisdiction arises under, the provisions of Title 28, U.S.C. Section 1346(a)(1), for the recovery of Internal Revenue taxes erroneously or illegally assessed or collected from the plaintiffs.

CONSTITUTIONAL PROVISIONS

Section 8 of Article 1—The Congress shall have power to lay and collect taxes, duties, imposts and excises, to pay the debts and provide for the common defense and general welfare of the United States; but all duties, imposts and excises shall be uniform throughout the United States.

FACTS

We sought a partial refund of our income taxes paid in the years 1980, 1981, and 1982 that were attributable to the unequal reduction in the size of income. We argued that we are entitled to the partial refund because the federal tax laws violate the uniformity clause contained in Section 8 of Article 1, of the federal Constitution. We claimed that the provisions that permit unequal reductions in the size of income violate the uniformity clause.

REASONS FOR GRANTING THE WRIT

1. The Concerns of Regionalism Were Compromised Before August 25, 1787

On August 25th, Mr. Carroll and Mr. Martin introduced a proposition that resulted in the preference clause six days later. Elliots Debates, page 479. This was a command that Congress, in the exercise of its powers to regulate commerce, not be partial to any ports or any states.

On August 25th, Mr. McHenry and General Pickney introduced a proposition that resulted in the uniform-

ity clause six days later. This was an indirect command that congress shall disregard states in laying duties, imposts and excises.

On August 28th, the two clauses were joined in the words; "nor shall any regulations of commerce or revenue give preference to the ports of one state over those of another, or oblige vessels bound to or from any state to enter, clear or pay duties, in another; and all tonnage, duties, imposts, and excises, laid by the legislature, shall be uniform throughout the United States," page 484.

On August 31st, on the clause "nor shall any regulations of commerce or revenue give preference to the ports of one state over those of another," agreed to nem con., page 502.

On August 31st, on the clause "or oblige vessels bound to or from any state to enter, clear, or pay duties, in another," page 502. Seven delegates made comments about this clause. This command that Congress shall not be partial to any port or any state was adopted by a vote of 8 to 2.

The word "tonnage" was struck out, nem con, as comprehended in "duties." On the question of the clause of the report, "and all duties, imposts and excises, laid by the legislature, shall be uniform throughout the United States." It was agreed to, nem con, page 503. This was an indirect command that Congress shall disregard states in laying duties, imposts, and excises.

Congress could not lay different rates on the same articles in different states. Nor could Congress tax

different articles in different states. So the only alternative was that Congress must lay the same amount to the same articles in each state. This was Luther Martin's definition of "uniform." The uniformity clause put an end to the 10-year-old controversy concerning the unequal distribution or existence of the taxed articles among the states, and the related term "uniform throughout the United States."

The uniformity clause commands that Congress lay the tax on distillers, for example, as though there is a distiller in every place in the United States. The clause commands that a tax on a class of imported articles be laid as though there is a seaport in all places in the United States. In other words, the laws shall not exclude any places in the United States in laying duties, imposts and excises. The taxes shall be uniform in all places. That is, the effective rate in numbers or zeros must be the same for the class and quantity in all places in the United States.

On September 14th, Article 1 section 8, the words "but all such duties, imposts, and excises shall be uniform throughout the United States" were unanimously annexed to the power of taxation. But the words were annexed to the power of taxation without the word "such" which referred to "laid by the legislature."

The taxes (the rate times the number of articles) shall be uniform (like the multiplication tables are uniform) in all places in the United States. The words "laid by the legislature," means that Congress must choose the rate and identify the class of the articles to be taxed. When Congress selects the class, all of the

articles in the class must be included in the law. But all the articles need not be taxed. The equal exemptions of the first articles do not prevent the taxes from being uniform on the articles laid by the legislature.

From the beginning on August 25th there was a negative concept relating to the commerce clause and a positive concept relating to the tax clause. The negative concept ended as the preference clause and the positive concept ended as the uniformity clause. The negative concept required Congress to be impartial in its commercial regulations respecting ports and states. The positive concept required Congress to disregard ports and states in laying duties, imposts, and excises. The two clauses were free standing and the two clauses were adopted by separate votes. The uniformity clause was not "shifted" from the preference clause.

Congress was granted the power to regulate commerce between the ports and the states and to lay duties, imposts, and excises for the new central government of all the people and all the places. It was expected that Congress would be fair in its exercise of the power to regulate commerce, and in its exercise of its power to lay duties, imposts and excises. But there remained a deep-seated distrust so the framers reduced the expectations to certainties by the introduction, and the adoption of the preference clause and the uniformity clause.

2. The Elements of the Uniform Taxes

The uniformity clause has nine related elements:

1. It demands that Congress exercise its power to the disadvantage of some states and to the advantage of other states in laying duties, imposts, and excises.

2. It ended the 10-year-old controversy concerning the unequal distribution or existence of the taxed articles among the states and the related term "uniform throughout the United States."

3. It prevents Congress from laying different rates to the same articles in different states.

4. It prevents Congress from taxing different articles in different states.

5. It creates its own formula for laying duties, imposts, and excises. The formula is: the same amount to be laid to the same articles in each state.

6. It prevents Congress from excluding in the law any places in the United States.

7. It requires Congress to include in the law all the articles in the class in all places in the United States.

8. The equally exempted articles plus the taxed articles must equal 100% of the same articles in all places in the United States.

9. It serves to burden all objects of taxation with the same effective rate, in numbers or zeros, for the class and quantity in all places in the United States.

3. Luther Martin's Definition of "Uniform"

Luther Martin, one of the designers of the uniformity clause, defined unform in these words: "that is, the

same amount to be laid to the same articles in each state." The articles are the same when the class is the same, and the law includes 100% of the same articles in all places in the United States.

The formula will produce a uniform tax in any and all circumstances. The effective rate of tax will be the same for the class and quantity in all places in the United States. The articles exempted in the law plus the articles taxed in the law will equal 100% of the property in all places in the United States.

The framers were aware of peoples' basic principles and did not trust Congress to write fair tax laws, so they commanded that the fairness of the taxes be measured in numbers. The uniformity clause represents intelligence raised to the highest level of common sense and justice.

4. The Flaw in "Territorial Only" Uniformity

The flaw in "territorial only" uniformity is that it is based on this statement: "If any of the articles in a class are taxed, all the articles in the class must be taxed." The correct wording is this: "If any of the articles in a class are taxed, all the articles in the class must be included in the law."

The articles exempted plus the articles taxed in the law equaled 100% of the articles in all places in the United States. The equal exemption was allowed on the basis of "enlightened taxation" in the absence of the words "laid by the legislature." The tax was not uniform on all the articles in the class, but the tax was uniform on all the articles in the class laid by the legislature.

Uniformity ends before the collection or the spending of the uniform tax begins. The uniform tax can be spent in-place with unequal but taxable tax credits to give unequal relief from the uniform tax. The uniform tax can be spent in-place with non-taxable tax credits if the spending in-place serves a national purpose without giving a direct or indirect non-taxable benefit to individuals.

5. The Five Flaws in the Geographical Uniformity Concept

1. The geographical uniformity concept can not have an existence if the articles exempted in the law plus the articles taxed in the law equal 100% of all the articles in the class in all places in the United States.

2. The effective rate is the same for the class and quantity only when two or more individuals pay tax on the same amount of their income. "The same amount of their income" may represent any percentage of their total income in excess of equal exemptions. According to a recent study by the government only 43.5% of income is taxed at a positive rate.

3. Each unequal reduction in the size of income creates two or more groups of taxpayers based on the percentage of income taxed in excess of the equal exemption.

4. The geographical uniformity concept divides our people, with the same income, into many groups and each group pays a different tax. If the tax is uniform, the equal exemption plus the income taxed equals 100% of income.

5. The Supreme Court has a rule that says: that if a thing cannot be done directly, it cannot be done indirectly but that only applies if it cannot be done at all, directly or indirectly. Geographical uniformity lays different rates on the same property indirectly which it cannot do directly or indirectly without violating the command of the uniformity clause.

6. The Legacy Tax in *Knowlton* v. *Moore*, 178 U.S. 41 (1900)

The law taxed five different classes of legacies based on degrees of kin, with five different rate schedules, and five equal exemptions of $10,000. The law violated the uniformity required by the Constitution in five different ways:

1) The decedent by will, or the states by operation of state law, determined the amount of the objects of the rates instead of Congress. The total amount of distributive shares of each decedent is the only amount that Congress can identify for all decedents.

2) The legacies are in dollars and dollars are the same kind of property. The same rates must be laid to the same property to prevent discriminations.

3) The same property was reclassified and taxed as classed by different rules. The result is discrimination.

4) The five equal exemptions prevented the amount exempted plus the amount taxed from equaling 100%.

5) The law produced a "spotty" uniform tax when all the distributed shares were taxed by the same rate schedule. But that does not satisfy the uniformity required by the constitution.

CONCLUSION

This court should grant the petition for certiorari to review the opinion in *Knowlton* v. *Moore,* 178 U. S. at 83-109.

Respectfully submitted,

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APPENDIX

APPENDIX A

NOT RECOMMENDED FOR FULL-TEXT PUBLICATION

No. 85-5193

UNITED STATES COURT OF APPEALS

FOR THE SIXTH CIRCUIT

HILTON HAZELWOOD and
KATHRYN W. HAZELWOOD, - - *Plaintiffs-Appellants,*

v.

UNITED STATES OF AMERICA, - - *Defendant-Appellee.*
BEFORE: ENGEL and KEITH, Circuit Judges; and WISEMAN, District Judge*

ORDER—Filed September 26, 1985

These two pro se plaintiffs appeal from a district court judgment dismissing their tax refund suit for being frivolous and further imposing a $200 sanction against their attorney for filing the suit. The attorney withdrew his representation after entry of the judgment.

Plaintiffs sought a refund of their federal income taxes paid in the years 1980, 1981 and 1982. Plaintiffs argued that they are entitled to a refund because the federal income tax laws violate the uniformity clause contained in section eight of Article I of the federal constitution. In their response to the government's motion to dismiss filed in the district court, plaintiffs explained that the Supreme Court case of *Knowlton* v. *Moore*, 178 U. S. 41 (1900), interpreting the uniformity clause to require geographic uniformity, is

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*The Honorable Thomas A. Wiseman, Jr., U.S. District Judge for the Middle District of Tennessee, sitting by designation.

flawed because the Court failed "to recognize that the Uniformity Clause was devised for the purpose of establishing a formula to which Congress must adhere in laying duties, imposts and excises." On appeal, the plaintiffs reiterate this argument in their briefs, and also submit that sanctions should not be applied to them for bringing this appeal.

Upon consideration of the district court record in light of the arguments presented by the parties in their respective briefs, this Court concludes that the district court properly dismissed plaintiffs' action. Contrary to the plaintiffs' contention, the Supreme Court exhaustively studied the framers' intent in enacting the uniformity clause in its opinion of *Knowlton* v. *Moore*, 178 U. S. at 83-109, and, therefore, it found ample support for its conclusions. The clause was proposed as one of several measures designed to limit the national government's authority to wield its power over commerce to the disadvantage of particular states. See *United States* v. *Ptasynski*, 462 U. S. 74, 81 (1983). While use of a mathematical formula is not prohibited by the clause, it was also clearly not an intended requirement which was felt to be necessary in order to mollify the concerns of regionalism that may be exerted by the national government.

For these reasons, this panel unanimously agrees that oral argument is not necessary in this appeal. Rule 34(a), Federal Rules of Appellate Procedure. The district court's judgment is, accordingly, affirmed pursuant to Rule 9(d)(3), Rules of the Sixth Circuit. The Government's request for costs and damages pursuant to Rule 38, Federal Rules of Appellate Procedure, is, however, denied.

ENTERED BY ORDER OF THE COURT

(s) John P. Hellman, Jr.
Clerk

APPENDIX B

IN THE

UNITED STATES DISTRICT COURT

FOR THE WESTERN DISTRICT OF KENTUCKY
OWENSBORO DIVISION

Civil Action No. 84-0269-0(A)

HILTON HAZELWOOD and
KATHRYN W. HAZELWOOD, - - - - *Plaintiffs*

v.

UNITED STATES OF AMERICA, - - - *Defendant*

ORDER—Entered February __, 1985

The Court having considered the defendant's Motion To Dismiss, it is hereby

ORDERED that the plaintiffs' complaint is dismissed and it is

FURTHER ORDERED that the defendant shall be awarded sanctions in the amount of $200.00 as against the plaintiffs' counsel.

(s) Charles M. Allen
United States District Judge